

1-1 By: Hegar S.B. No. 1074
1-2 (In the Senate - Filed March 4, 2013; March 12, 2013, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 March 28, 2013, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; March 28, 2013,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

1-8		Yea	Nay	Absent	PNV
1-9	Carona	X			
1-10	Taylor	X			
1-11	Eltife	X			
1-12	Estes	X			
1-13	Hancock	X			
1-14	Lucio	X			
1-15	Van de Putte	X			
1-16	Watson	X			
1-17	Whitmire	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1074 By: Taylor

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to electronic transmission of documentation involved in
1-22 certain insurance transactions.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 35.001, Insurance Code, is amended by
1-25 amending Subdivision (2) and adding Subdivisions (3), (4), and (5)
1-26 to read as follows:

1-27 (2) "Regulated entity" means each insurer, ~~or other~~
1-28 organization, person, or program regulated by the department,
1-29 including:

1-30 (A) a domestic or foreign, stock or mutual, life,
1-31 health, or accident insurance company;

1-32 (B) a domestic or foreign, stock or mutual, fire
1-33 or casualty insurance company;

1-34 (C) a Mexican casualty company;

1-35 (D) a domestic or foreign Lloyd's plan;

1-36 (E) a domestic or foreign reciprocal or
1-37 interinsurance exchange;

1-38 (F) a domestic or foreign fraternal benefit
1-39 society;

1-40 (G) a domestic or foreign title insurance
1-41 company;

1-42 (H) an attorney's title insurance company;

1-43 (I) a stipulated premium company;

1-44 (J) a nonprofit legal service corporation;

1-45 (K) a health maintenance organization;

1-46 (L) a statewide mutual assessment company;

1-47 (M) a local mutual aid association;

1-48 (N) a local mutual burial association;

1-49 (O) an association exempt under Section 887.102;

1-50 (P) a nonprofit hospital, medical, or dental
1-51 service corporation, including a company subject to Chapter 842;

1-52 (Q) a county mutual insurance company; ~~and~~

1-53 (R) a farm mutual insurance company; and

1-54 (S) an agency or agent of an insurer,
1-55 organization, person, or program described by this subdivision.

1-56 (3) "Deliver by electronic means" means:

1-57 (A) deliver to an e-mail address at which a party
1-58 has consented to receive notices, documents, or information; or

1-59 (B) post on an electronic network or Internet
1-60 website accessible by an electronic device, including a computer,

mobile device, or tablet, and deliver notice of the posting to an e-mail address at which the party has consented to receive notices.

(4) "Party" means a recipient, including an applicant, insured, policyholder, enrollee, or annuity contract holder, of a notice or document or of information required as part of an insurance transaction.

(5) "Written communication" means a notice or document or other information provided in writing.

SECTION 2. Section 35.004, Insurance Code, is amended to read as follows:

Sec. 35.004. MINIMUM STANDARDS FOR REGULATED ENTITIES ELECTRONICALLY CONDUCTING BUSINESS WITH CONSUMERS. (a) This section does not apply to a notice of cancellation or termination of health insurance or benefits or life insurance or benefits, excluding annuities.

(b) Subject to Subsection (d), a notice to a party or other written communication with a party required in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means only if the delivery, storage, or presentment complies with Chapter 322, Business & Commerce Code.

(c) Delivery of a written communication in compliance with this section is equivalent to any delivery method required by law, including delivery by first class mail, first class mail, postage prepaid, or certified mail.

(d) A written communication may be delivered by electronic means to a party by a regulated entity under this section if:

(1) the party affirmatively consented to delivery by electronic means and has not withdrawn the consent;

(2) the party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

(A) any right or option the party may have for the written communication to be provided or made available in paper or another nonelectronic form;

(B) the right of the party to withdraw consent under this section and any conditions or consequences imposed if consent is withdrawn;

(C) whether the party's consent applies:

(i) only to a specific transaction for which the written communication must be given; or

(ii) to identified categories of written communications that may be delivered by electronic means during the course of the relationship between the party and the regulated entity;

(D) the means, after consent is given, by which a party may obtain a paper copy of a written communication delivered by electronic means; and

(E) the procedure a party must follow to:

(i) withdraw consent under this section; and

(ii) update information needed for the regulated entity to contact the party electronically; and

(3) the party:

(A) before giving consent, is provided with a statement identifying the hardware and software requirements for the party's access to and retention of a written communication delivered by electronic means; and

(B) consents electronically or confirms consent electronically in a manner that reasonably demonstrates that the party can access a written communication in the electronic form used to deliver the communication.

(e) After consent of the party is given, in the event a change in the hardware or software requirements to access or retain a written communication delivered by electronic means creates a material risk that the party may not be able to access or retain a subsequent written communication to which the consent applies, the regulated entity shall:

(1) provide the party with a statement:

(A) identifying the revised hardware and

software requirements for access to and retention of a written communication delivered by electronic means; and

(B) disclosing the right of the party to withdraw consent without the imposition of any condition or consequence that was not disclosed under Subsection (d)(2)(B); and

(2) comply with Subsection (d)(3).

(f) This section does not affect requirements for content or timing of any required written communication.

(g) If a written communication provided to a party expressly requires verification or acknowledgment of receipt, the written communication may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

(h) The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party may not be denied solely due to the failure to obtain electronic consent or confirmation of consent of the party in accordance with Subsection (d)(3)(B).

(i) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a written communication delivered by electronic means to the party before the withdrawal of consent is effective. A withdrawal of consent is effective within a reasonable period of time after the date of the receipt by the regulated entity of the withdrawal. Failure by a regulated entity to comply with Subsection (e) may be treated by the party as a withdrawal of consent.

(j) If the consent of a party to receive a written communication by electronic means is on file with a regulated entity before January 1, 2014, and if the entity intends to deliver to the party written communications under this section, then before the entity may deliver by electronic means additional written communications, the entity must notify the party of:

(1) the written communications that may be delivered by electronic means that were not previously delivered by electronic means; and

(2) the party's right to withdraw consent to have written communications delivered by electronic means.

(k) Except as otherwise provided by law, an oral communication or a recording of an oral communication may not qualify as a written communication delivered by electronic means for purposes of this chapter.

(l) If a signature on a written communication is required by law to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the notary public or other authorized person and the other required information are attached to or logically associated with the signature or written communication. ~~[RULES. (a) The commissioner shall adopt rules necessary to implement and enforce this chapter.~~

~~[(b) The rules adopted by the commissioner under this section must include rules that establish minimum standards with which a regulated entity must comply in the entity's electronic conduct of business with other regulated entities and consumers.]~~

SECTION 3. Chapter 35, Insurance Code, is amended by adding Section 35.005 to read as follows:

Sec. 35.005. EXEMPTION FROM CERTAIN FEDERAL LAWS. This chapter modifies, limits, or supersedes the provisions of the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) as authorized by Section 102 of that Act (15 U.S.C. Section 7002).

SECTION 4. This Act applies only to a written communication that is delivered by electronic means on or after January 1, 2014. A written communication delivered by electronic means before January 1, 2014, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2013.

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